TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 341

WILLIAM EARL DODGE AND JOSHUA T. DODGE, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 16, 1926

CERTIORARI GRANTED MAY 10, 1926

(31,855)

(31,855)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 12, 1926

[fol. 1] [Captions omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT, DISTRICT OF RHODE ISLAND

Adm. No. 1570

UNITED STATES OF AMERICA

vs.

Motor Boat "RAY OF BLOCK ISLAND"

PETITION FOR LEAVE TO FILE LIBEL OF INFORMATION AND ORDER ALLOWING SAME—Filed March 5, 1925

This was a Libel of Information filed by the United States District Attorney for this District under Section 26, Title II, National Prohibition Act, in the words and figures following:

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

I, Norman S. Case, United States Attorney for said District, respectfully petition said Honorable Court for leave to file the accompanying libel of information against Motor Boat "Ray of Block Island."

Norman Stanley Case, United States Attorney.

Libel of information may be filed and process issue returnable March 23, 1925.

Arthur L. Brown, J., March 5, 1925.

IN UNITED STATES DISTRICT COURT

LIBEL OF INFORMATION

To the Honorable Arthur L. Brown, United States District Judge for the District of Rhode Island:

The libel of the United States of America, by Norman S. [fol. 3] Case, United States Attorney for the District of

Rhode Island, against the Motor Boat "Ray of Block Island," her engines, tackle, apparel and furniture, who prosecutes for and on behalf of the United States and respectfully represents and shows to the court:

I. That heretofore, to wit, the 18th day of April, A. D. 1924, Lt. L. P. Pelrine of the Police Force of the City of Providence, in said District and a number of police officers, acting under his control and direction, discovered one Joshua Trueman Dodge in the act of transporting in violation of Title II, Sections 3 and 26 of the National Prohibition Act, a large quantity of intoxicating liquor, in a certain water craft, to wit, a motor boat bearing the name "Ray of Block Island," Registration No. G 87, in certain navigable waters of the United States, to wit, on the Providence River, so called, alongside the dock of the Saconnet Coal Company, so called and near Allens Avenue, in said City and County of Providence, in said District and within the jurisdiction of this Honorable Court.

II. That the said police officers then and there seized said intoxicating liquors and said Motor Boat "Ray of Block Island," and arrested said Joshua Trueman Dodge, said Dodge being then and there in possession and charge of said Motor Boat; that subsequently said Dodge was arrested by United States officers.

III. That the said Joshua Trueman Dodge, heretofore, to wit, the 10th day of December, A. D. 1924, was duly convicted in said District Court of the offense of transporting intoxicating liquor in violation of Title II, Section 3 of the National Prohibition Act, was sentenced to pay and did pay a fine of $500.00, said offense being the offense described in paragraph I hereof.

[fol. 4] IV. That the said Motor Boat "Ray of Block Island" was delivered to Harry G. Sheldon, Federal Prohibition Director for the District of Rhode Island and is now in the custody of said Harry G. Sheldon in Pawtuxet Cove in Providence County, in said District and within the jurisdiction of this Honorable Court.

That by reason of the foregoing premises and under and by virtue of the provisions of Title II, Section 26 of

the National Prohibition Act, said Motor Boat "Ray of Block Island," her engines, tackle, apparel and furniture became and is forfeited to the use of the United States as in said statute made and provided, and is subject to condemnation and sale, the proceeds thereof to be paid into the Treasury of the United States.

Wherefore your libellant prays that this Honorable Court enter a decree of condemnation against said Motor Boat "Ray of Block Island" to the use of the United States; that said Motor Boat "Ray of Block Island" shall be sold at public auction; that all bona fide liens which are established shall, after deducting all expenses, fees and costs, be paid and that the balance of the proceeds shall be paid into the Treasury of the United States as miscellaneous receipts.

Your libellant further prays that the usual process and monition of this Honorable Court issue in this behalf, and that all persons interested in said property may be cited and admonished in general and special to appear and answer the premises.

Norman Stanley Case, United States Attorney.

Norman Stanley Case, being duly sworn, on oath deposes and says; that he is the United States Attorney for the District of Rhode Island; that he has read the foregoing libel; that the same is true to the best of his information, knowledge and belief; that the reason why this verification is made [fol. 5] by the deponent and not by the libellant is that the libellant is a corporation sovereign.

Subscribed and sworn to before me this 5th day of March, A. D. 1925, at Providence, R. I. Harold A. Andrews, Notary Public.

In United States District Court

Warrant and Monition and Marshal's Return—Issued March 5, 1925

The President of the United States of America to the Marshall for the District of Rhode Island or to his Deputy, Greeting:

Whereas, a libel hath been filed in the District Court of the United States for the District of Rhode Island, on the 5 day of March, A. D. 1925, by United States of America, by its proctor, Norman S. Case, United States Attorney for the District of Rhode Island, against the Motor Boat "Ray of Block Island," her engines, tackle, apparel and furniture in a cause of condemnation and forfeiture under the Navigation Customs and Revenue Laws of the United States and the National Prohibition Act for the reasons and causes in said Libel mentioned, and praying the usual process and monition of the said court, in that behalf to be made, and that all persons interested in the said Motor Boat "Ray of Block Island," her engines, tackle, apparel and furniture may be cited in general and special to answer the premises, and all proceedings being had, that the said Motor Boat "Ray of Block Island," her engines, tackle, apparel and furniture may, for causes in said libel mentioned, be condemned and sold as prayed for in said libel.

[fol. 6] You are therefore commanded to attach said Motor Boat "Ray of Block Island," her engines, tackle, apparel and furniture and to detain the same in your custody until further order of court and to give due notice to all persons claiming the same or having anything to say why the same should not be sold pursuant to the prayer of said libel, that they appear before said court to be held at Providence, in and for said District, on the 23 day of March A. D. 1925 at 10 o'clock A. M., then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness, the Hon Arthur L. Brown, Judge of said court at Providence, this 5 day of March, A. D. 1925.

Alice Peckham, Clerk. (L. S.)

Marshal's Return

At Pawtuxet, R. I., March 6, 1925.

In obedience to the within monition, I attached the said Motor Boat "Ray of Block Island," etc., and have given due notice to all persons claiming the same, by advertising the substance of this monition in the Providence Journal, March 7, 14, and 21, and by posting a certified copy thereof on the bulletin board of the Federal Court.

William R. Rodman, U. S. Marshal. Patrick J. Pyne, Deputy.

Fees:

Service	$2 00
Travel	42
Copy and Posting	1 30
Advertising	8 64
Custody	598 00
	$610 36

up to Aug. 20, 1925, date of Appeal.

[fol. 7] In United States District Court

Lien Claim of Mortgagee—Filed April 6, 1925

And now comes Phebe Ray Dodge of the Town of New Shoreham, County of Newport and State of Rhode Island, and by her authorized attorney files this her claim for said motor boat "Ray of Block Island" and intervening in accordance with the provisions of Section 26 of the National Prohibition Act says that she has a just claim and lien against said vessel in the amount of three thousand dollars represented by a mortgage of record which she prays leave to introduce as proof thereof; wherefore she moves that an order be entered by this Honorable Court either establishing her lien on said vessel or ordering the release of said vessel into her custody because of the improbability of the sale price on forfeiture bringing a sum sufficient to pay said lien and the Government charges against said vessel.

Phebe Ray Dodge, by Her Attorney, Daniel T. Hagan.

In United States District Court

Claim of Owners—Filed as of April 7, 1925

Now comes William Earl Dodge and Joshua T. Dodge, of the Town of New Shoreham, in the County of Newport and State of Rhode Island, and by their authorized attorney, Peter W. McKiernan, file this their claim of ownership of the said vessel, and protesting that the taking over of the said Motor Boat by the Federal Prohibition Agents from [fol. 8] the police officers by whom said boat was seized, was in violation of law and, without waiving any of their rights which they may have under the laws of the United States of America, being compelled to make the admissions herein for the purposes of recovering their property so seized as aforesaid, claim that they are the true and lawful owners of the said vessel, her engines, tackle, apparel and furniture, and pray that they may be permitted to appear in that certain libel numbered 1570 filed against said vessel and to defend the same; and further pray that this Court grant them an order to release said vessel, her engines, tackle, apparel and furniture.

William Earl Dodge, Joshua T. Dodge, by Their Attorneys, Peter W. McKiernan.

Enter. Arthur L. Brown. July 25, 1925.

Entered as of April 7, 1925, by order of Court.

In United States District Court

Motion to Dismiss—Filed April 7, 1925

To the Honorable the Judges of the District Court of the United States in and for the District of Rhode Island:

And now come William Earl Dodge and Joshua T. Dodge of the Town of New Shoreham, County of Newport and State of Rhode Island, and move that said libel be dismissed and as cause therefore say:

1. That the National Prohibition Act confines the duty of seizures of vehicles to officers of the United States and that a seizure by police officers under said act is without author-

ity and is not recognized by a subsequent surrender of the vehicle to federal officers.

[fol. 9] 2. That there is no authority under the State Prohibition Law to seize any boat or vehicle found transporting intoxicating liquor.

3. That forfeiture can only be declared if the thing sought to be forfeited was lawfully taken into possession.

By Their Attorney, Peter W. McKiernan.

In United States District Court

Answer—Filed April 7, 1925

To the Honorable the District Judges of and for the District Court of the United States in and for the District of Rhode Island:

Joshua T. Dodge, of the Town of New Shoreham, County of Newport and State of Rhode Island, owner and claimant of Motor Boat "Ray of Block Island," her engines, tackle, apparel and furniture, as the same are proceeded against by the libel of the United States of America in a cause of forfeiture, admiralty and maritime, answers said libel:

First. The claimant admits the allegations in the first article of said libel.

Second. The claimant admits the allegations in the second article of said libel.

Third. The claimant admits the allegations in the third article of said libel.

Fourth. The claimant admits the allegations in the fourth article of said libel.

Fifth. The claimant denies the allegations in the fifth article of said libel.

Joshua T. Dodge, by His Attorney-in-fact, Peter W. McKiernan.

[fol. 10] At Providence, County of Providence and State of Rhode Island, this 7th day of April, A. D. 1925, personally appeared before me, Catherina H. McKiernan, a notary

public in and for said State of Rhode Island, Peter W. McKiernan, to me known and known by me to be the attorney in fact of said Joshua T. Dodge, claimant, and he made oath to the foregoing answer and facts therein set forth and acknowledged said facts related of his own knowledge to be true and those set forth upon information and belief to be true to the best of his knowledge and belief.

Catherina H. McKiernan, Notary Public.

IN UNITED STATES DISTRICT COURT

ARGUMENT AND SUBMISSION ON MOTION TO DISMISS

Thereafter, to wit, on July 24, 1925, the case was called for hearing on the claimants' Motion to Dismiss and was fully heard and argued by counsel for the respective parties, and was held for advisement, and on July 31, 1925, the Opinion of the Court granting claimants' Motion to Dismiss Libel was announced.

IN UNITED STATES DISTRICT COURT

OPINION—Announced July 31, 1925

BROWN, J.:

The libel is as follows:

"The libel of the United States of America, by Norman S. Case, United States Attorney for the District of Rhode Island, against the Motor Boat 'Ray of Block Island,' her engines, tackle, apparel and furniture, who prosecutes for and on behalf of the United States and respectfully represents and shows to the court:

I. That heretofore, to wit, the 18th day of April, A. D. 1924, Lt. L. P. Pelrine of the Police Force of the City of [fol. 11] Providence, in said District and a number of police officers, acting under his control and direction, discovered one Joshua Trueman Dodge in the act of transporting in violation of Title II, Section 3 and 26 of the National Pro

hibition Act, a large quantity of intoxicating liquor, in a certain water craft, to wit, a motor boat bearing the name 'Ray of Block Island,' Registration No. G-87, in certain navigable waters of the United States, to wit, on the Providence River, so called, alongside the dock of the Saconnet Coal Company, so called and near Allens Avenue, in said City and County of Providence, in said District and within the jurisdiction of this Honorable Court.

II. That the said police officers then and there seized said intoxicating liquors and said Motor Boat 'Ray of Block Island' and arrested said Joshua Trueman Dodge, said Dodge being then and there in possession and charge of said Motor Boat; that subsequently said Dodge was arrested by United States officers.

III. That the said Joshua Trueman Dodge, heretofore, to wit, the 10th day of December, A. D. 1924, was duly convicted in said District Court of the offense of transporting intoxicating liquor in violation of Title II, Section 3 of the National Prohibition Act, was sentenced to pay and did pay a fine of $500.00 said offense being the offense described in paragraph I hereof.

IV. That the said Motor Boat 'Ray of Block Island' was delivered to Harry G. Sheldon, Federal Prohibition Director for the District of Rhode Island and is now in the custody of said Harry G. Sheldon in Pawtuxet Cove in Providence County, in said District and within the jurisdiction of this Honorable Court.

That by reason of the foregoing premises and under and by virtue of the provisions of Title II, Section 26 of the National Prohibition Act, said Motor Boat 'Ray of Block Island,' her engines, tackle, apparel and furniture became [fol. 12] and is forfeited to the use of the United States as in said statute made and provided, and is subject to condemnation and sale, the proceeds thereof to be paid into the Treasury of the United States.

Wherefore your libellant prays that this Honorable Court enter a decree of condemnation against said Motor Boat 'Ray of Block Island' to the use of the United States; that said Motor Boat 'Ray of Block Island' shall be sold at public auction; that all bona fide liens which are established

shall, after deducting all expenses, fees and costs, be paid and that the balance of the proceeds shall be paid into the Treasury of the United States as miscellaneous receipts.

Your libellant further prays that the usual process and monition of this Honorable Court issue in this behalf, and that all persons interested in said property may be cited and admonished in general and special to appear and answer the premises.

Norman Stanley Case, United States Attorney."

By answer the claimant admits the allegations of the first, second, third and fourth articles of the libel but denies that by reason of the facts stated in articles one to four inclusive the motor boat "Ray of Block Island" is subject to forfeiture under Title II, Section 26 of the National Prohibition Act.

The Motion to Dismiss is as follows:

"And now come William Earl Dodge and Joshua T. Dodge of the Town of New Shoreham, County of Newport and State of Rhode Island, and move that said libel be dismissed and as cause therefor say:

1. That the National Prohibition Act confines the duty of seizure of vehicles to officers of the United States and that a seizure by police officers under said act is without authority and is not recognized by a subsequent surrender of the vehicle to federal officers.

[fol. 13] 2. That there is no authority under the State Prohibition Law to seize any boat or vehicle found transporting intoxicating liquor.

3. That forfeiture can only be declared if the thing sought to be forfeited was lawfully taken into possession.

By Their Attorney Peter W. McKiernan."

The claimant relies upon the decisions of the Circuit Court of Appeals for the Ninth Circuit, U. S. v. Loomis, 297 Fed. 359, March 28, 1924; U. S. v. Thomas, 297 Fed. 362, March 28, 1924.

The United States relies upon the decision of the Circuit Court of Appeals for the Fifth Circuit, U. S. v. Story, 294 Fed. 517, Nov. 30, 1923. This decision was brought to the attention of the Circuit Court of Appeals for the Ninth Circuit as appears from its comment, 297 Fed. 362:

"We have given careful consideration to the opinion in U. S. v. Story (C. C. A.) 294 Fed. 517, where the court held that Sec. 26, supra, was broad enough to confer authority upon state, as well as federal officers; but necessity of adherence to the rule of strict construction constrains us to hold that the police authorities were not empowered to make the seizure."

It is conceded that the state law of Rhode Island conferred no authority to seize any boat or vehicle found transporting intoxicating liquor.

In Carroll et al. v. U. S., 267 U. S. 132 at page 155 it was said:

"Under Section 28, Title II, of the Prohibition Act the Commissioner of Internal Revenue, his assistants, agents and inspectors are to have the power and protection in the enforcement of the Act conferred by the existing laws relating to the manufacture or sale of intoxicating liquors. Officers who seize under Section 26 of the Prohibition Act [Fol. 11] are therefore protected by Section 970 of the Revised Statutes, providing that:

"'When, in any prosecution commenced on account of the seizure of any vessel, goods, wares, or merchandise, made by any collector or other officer, under any Act of Congress authorizing such seizure, judgment is rendered for the claimant, but it appears to the court that there was reasonable cause of seizure, the court shall cause a proper certificate thereof to be entered, and the claimant shall not, in such case, be entitled to costs, nor shall the person who made the seizure, nor the prosecutor, be liable to suit or judgment on account of such suit or prosecution: Provided, that the vessel, goods, wares, or merchandise be, after judgment, forthwith returned to such claimant or his agent.'

"It follows from this that if an officer seizes an automobile or the liquor in it without a warrant and the facts as subsequently developed do not justify a judgment of condemnation and forfeiture, the officer may escape costs or a suit for damages by showing that he had reasonable or probable cause for the seizure. Stacey v. Emery, 97 U. S., 642."

It is perhaps significant that the protection afforded by Sec. 28 of the Prohibition Act is confined to the "commis-

sioner, his assistants, agents and inspectors, and all other officers of the United States, whose duty is to enforce criminal laws."

It is also significant that Sec. 26 prescribes duties of "any officer of the law"; "it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law;" as well as "take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance," etc.

While a statute of the United States may provide that action may be taken by state officers in aid of a federal statute, it is doubtful if a federal statute can impose upon a state officer a positive duty of that kind. At least we [fol. 15] should be disinclined to construe a statute imposing a duty upon "any officer of the law" to include other officers than those of the United States. We should at least require unambiguous language to support such a construction.

It is reasonable to say that Sec. 28 should be construed in conjunction with Sec. 26 and that only officers who are granted the powers and protection under Sec. 28 are intended to be charged with the positive duty under Sec. 26. Furthermore, the provisions concerning the approval of bonds by said officer seem inappropriate when applied to police officers of a city.

In U. S. v. Loomis, 297 Fed. 359 at page 362 it was said as to the applicability of Sec. 1014 of the Revised Statutes that it

"pertains to the mode or process relative to procedure by which an officer may be arrested, imprisoned, or bailed, but in our opinion does not affect a procedure in the federal court which has to do with an inquiry into the legality of the seizure and forfeiture of his property.

Roth v. United States (C. C. A) 294 Fed. 475."

I am unable to see that R. S. Sec. 1014 affords support to a broad construction of the words "any officer of the law," contained in Sec. 26, which includes police officers of a city.

As there are conflicting decisions by Courts of Appeals, this court can follow but one of these decisions. It seems to me that the later decision in U. S. v. Loomis, 297 Fed. 359, is sufficient authority upon which to sustain the claimant's Motion to Dismiss. While Article IV of the libel is in gen-

eral terms and does not give the date of the delivery of the boat to the federal prohibition director, it was stated at the bar that upon the seizure of the boat by the police, the liquors were removed therefrom by the police and that at the time of her delivery to the federal prohibition direc- [fol. 16] tor she had been unladen. The present case, therefore, is not affected by any previous rulings in cases where police officers had stopped a laden vehicle on the highways and notified prohibition officers who made seizure of the vehicle while still laden and while the liquor was still in the process of transportation, though temporarily stopped upon the highway.

Motion to Dismiss granted. A draft decree may be presented accordingly.

IN UNITED STATES DISTRICT COURT

FINAL DECREE—August 1, 1925

This cause came on to be heard upon the libel answer thereto and motion of the claimants Joshua Trueman Dodge and William Earl Dodge to dismiss said libel, and it appearing to the satisfaction of the court; that said claimants are entitled to possession of said boat, it is therefore ordered, adjudged and decreed that William R. Rodman, United States Marshal deliver said motor boat "Ray of Block Island" to said claimants.

Warrant of delivery to issue ten days after the date hereof unless notice of appeal is filed.

Arthur L. Brown, J., U. S. District Judge.

Enter: August 1, 1925. By order to—

Alice Peckham, Clerk.

Assented to as to form.

Harold A. Andrews, Asst. U. S. Atty.

In United States District Court

Stipulation Extending Time—Filed August 10, 1925

Time for issuance of warrant of delivery further extended to August 20, 1925.

[fol. 17] Peter W. McKiernan, Attorney for Claimant.
Harold S. Andrews, Attorney for Libellant.

Enter: August 10, 1925. Arthur L. Brown, J.

In United States District Court

Petition for Appeal—Filed August 20, 1925

Now comes the United States of America, Libellant, conceiving itself aggrieved by the final decree heretofore entered in this cause on the 1st day of August, A. D. 1925, as more specifically specified in the assignment of errors herewith filed, hereby appeals from said final decree to the United States Circuit Court of Appeals for the First Circuit, for the reasons specified in said assignment of errors and prays that an appeal may be allowed and that a transcript of the record and proceedings in this cause may be sent to the said United States Circuit Court of Appeals for the First Circuit, and that upon the allowance of said appeal said appeal may operate as a supersedeas and may suspend during the pendency of said appeal the effect of said decree and the issuance of a warrant of delivery.

By Its Proctor, Harold A. Andrews, Assistant United States Attorney, Proctor for Libellant.

Appeal allowed and to act as a supersedeas. Arthur L. Brown, J. August 20, 1925.

[fol. 18] In United States District Court

Assignments of Error—Filed August 20, 1925

And now comes the United States of America, Libellant, and makes and files this its assignment of errors:

(1) The District Court of the United States for the District of Rhode Island erred in entering the final decree delivering the vessel to the claimants.

(2) The District Court of the United States for the District of Rhode Island erred in granting claimants' motion to dismiss the libel.

(3) The District Court of the United States for the District of Rhode Island erred in holding that the libel did not state a cause for forfeiture.

(4) The District Court of the United States for the District of Rhode Island erred in holding as implied by said final decree that a forfeiture of a vehicle or vessel under Section 26, Title II of the National Prohibition Act can be decreed only where officers of the United States discover the person in charge of the vehicle or vessel in the act of transportating intoxicating liquor in violation of the law.

(5) The District Court of the United States for the District of Rhode Island erred in holding as implied by said final decree that a forfeiture of a vehicle or vessel under Section 26, Title II of the National Prohibition Act can be decreed only upon discovery, seizure and arrest by officers of the United States.

Wherefore the United States of America, Libellant, prays that the final decree of the District Court of the United States for the District of Rhode Island be reversed.

By Its Proctor, Harold A. Andrews, Assistant United States Attorney, Proctor for Libellant.

[fols. 19 & 20] Citation, in usual form, showing service on Peter W. McKiernan and Daniel T. Hagan, omitted in printing.

[fols. 21 & 22] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 23] In United States Circuit Court of Appeals for the First Circuit, October Term, 1925

No. 1888

Motor Boat Ray of Block Island, United States of America, Libellant, Appellant,

v.

William Earl Dodge et al., Appellees

Appeal from the District Court of the United States for the District of Rhode Island

Before Bingham, Johnson, and Anderson, JJ.

Opinion—Filed March 3, 1926

Bingham, J.:

This is a libel of information filed by the United States on March 5, 1925, in the federal District Court for Rhode Island against the Motor Boat Ray of Block Island for forfeiture under Section 26, Title II, of the National Prohibition Act.

In the libel it is alleged in substance: (1) that on the eighteenth day of April, 1924, police officers of the City of Providence discovered the claimant, Joshua Trueman Dodge, in the act of transporting, in violation of the National Prohibition Act, a quantity of intoxicating liquor in the motor boat within said District; (2) that said officers then and there seized the liquors and motor boat and arrested said Dodge, who was in charge of the motor boat, [fol. 24] and that subsequently said Dodge was arrested by United States officers; (3) that said Dodge, on the tenth day of December, 1924, was duly convicted in said District Court of the offence of unlawful transportation for which he had been arrested; (4) that, after the seizure, the motor boat was turned over to the Federal Prohibition Director for said District and was, at the time the libel was filed, in his possession; and (5) that by reason of the premises the motor boat became forfeited.

On this libel the usual warrant and monition were issued and duly served.

The claimants filed a motion to dismiss, as follows:

"1. That the National Prohibition Act confines the duty of seizures of vehicles to officers of the United States and that a seizure by police officers under said act is without authority and is not recognized by a subsequent surrender of the vehicle to federal officers.

"2. That there is no authority under the State Prohibition Law to seize any boat or vehicle found transporting intoxicating liquor.

"3. That forfeiture can only be declared if the thing sought to be forfeited was lawfully taken into possession."

On the same day the claimants filed an answer admitting the allegations of the libel but denying that they constituted cause for forfeiture.

After hearing the District Judge filed an opinion granting the motion to dismiss on the ground that Section 26 of the National Prohibition Act, read in connection with other provisions of the Act, did not confer authority upon officers other than those of the United States to enforce the provisions of said section, following the decisions in the Ninth Circuit of United States v. Loomis, 297 Fed. 359; and United States v. Thomas, 297 Fed. 362, it being conceded that the law of the State of Rhode Island conferred no authority to seize a vehicle or boat found transporting intoxicating liquors, and that, at the time the Ray was turned over to the Federal Prohibition Director all liquors previously found upon her by the police had been removed.

We agree with the decision of the court below as to the [fol. 25] construction of Section 26 of Title II of the Prohibition Act that it confers authority only upon United States officers but are of the opinion that it erred in dismissing the libel, as the United States, in taking over the vessel and filing the libel to enforce a forfeiture, ratified and adopted the acts of the police officers and thereby rendered the seizure lawful under Section 26, as the boat, at the time the seizure was made, was engaged in the unlawful transportation of intoxicating liquors. It is conceded that the circumstances attending the seizure would have rendered it lawful had it been made by federal officers, and we are of the opinion that it is equally so, the United States

having adopted the acts of the police officers in making the seizure.

In The Caledonian, 4 Wheat. 99, 101, Judge Story, speaking for the court, said:

"It is a general rule that any person may seize any property forfeited to the use of the government, either by the municipal law, or by the law of prize, for the purpose of enforcing the forfeiture. And it depends upon the government itself, whether it will act upon the seizure. If it adopts the acts of the party, and proceeds to enforce the forfeiture by legal process, this is a sufficient recognition and confirmation of the seizure, and is of equal validity in law, with an original authority given to the party to make the seizure. The confirmation acts retroactively, and is equivalent to a command."

See also Wood v. United States, 16 Pet. 341; Taylor v. United States, 3 How. 197; United States v. Story, 294 Fed. 517; United States v. One Studebaker Seven-Passenger Sedan, 4 Fed. (2d) 534; The G. 883, 6 Fed. (2d) 416.

The decree of the District Court is reversed and the case is remanded to that court for further proceedings not inconsistent with this opinion.

[fol. 26] On January 5, 1926, this cause came on to be heard, and was fully heard by the court, Honorable George H. Bingham, Honorable Charles F. Johnson and Honorable George W. Anderson, Circuit Judges, sitting.

In United States Circuit Court of Appeals

Final Decree—March 3, 1926.

This cause came on to be heard January 5, 1926, upon the transcript of record of the District Court of the United States for the District of Rhode Island, and was argued by counsel.

Upon consideration whereof, it is now, to wit, March 3, 1926, here ordered, adjudged and decreed as follows: The decree of the District Court is reversed and the case is remanded to that court for further proceedings not inconsistent with the opinion passed down this day.

By the Court.

Arthur I. Charron, Clerk.

In United States Circuit Court of Appeals

Motion and Order Staying Mandate—Filed March 29, 1926

Now comes William Earl Dodge et al., appellees, in the above-entitled cause and represent to this Honorable Court that they intend to file a petition in the Supreme Court of the United States for a writ of certiorari.

Wherefore, the said William Earl Dodge et al., appellees, move that the issue of the mandate in the above-entitled cause be stayed pending the determination by said Supreme Court of their petition for said writ, or until the further order of this court.

William Earl Dodge et al., Appellees, by Their Attorney, Daniel T. Hogan.

[fol. 27] On the same day, to wit, on March 29, 1926, the following Order of Court was entered:

Order of Court—March 29, 1926

Upon motion of appellees, it is ordered that the mandate herein be, and the same hereby is, stayed until further order of court, upon the condition that said appellees file, within twenty days, a petition for writ of certiorari in the Supreme Court of the United States.

By the Court.

Arthur I. Charron, Clerk.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 28] In Supreme Court of the United States

Order Allowing Certiorari—Filed May 10, 1926

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.